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**United Malayan Banking Corp Bhd v
Ernest Cheong Yong Yin**

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FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 03–2 OF
2001 (W)
NIK HASHIM FCJ
27 FEBRUARY 2007

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*Civil Procedure — Costs — Taxation — Bill of costs — Getting up — Review
of quantum awarded by registrar — Judicial discretion on review — Whether
quantum fair and reasonable — Whether quantum awarded inadequate —
Whether judicial interference warranted — Rules of the High Court 1980 O 59
rr 34 & 36*

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This was the respondent's application under O 59 r 36 of the Rules of the
High Court 1980 to review the decision of the learned deputy registrar for
awarding RM35,000 as getting up fees for the appeal in the Federal Court.
The respondent argued that the amount awarded was inadequate and ought
to be increased to RM70,000.

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Held, dismissing the application:

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(1) The learned registrar gave her grounds for awarding the sum of
RM35,000 as getting up fee and had applied the correct principles in
arriving at the figure. The sum awarded was not manifestly low and out
of proportion to the complexity and novelty of the question posed.
It would also not be just to the appellant to be further burdened with
extra costs if the quantum was increased as the appellant could not now
recover the judgment debt from the respondent (see para 7).

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(2) In the present case, the bulk of the preparation by counsel would have
been at the High Court and the Court of Appeal levels. And since the
taxing respondent was successful at both the courts, there was little for
the respondent to prepare in relation to the appeal in the Federal Court
(see para 8).

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(3) Further, the respondent's application for review did not involve any
error of principle on the part of the registrar. As such, the amount of
RM35,000 awarded by the learned registrar for getting up fee was fair
and reasonable. There was no justification for the court to interfere with
the decision (see para 9).

[Bahasa Malaysia summary]

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Ini adalah permohonan responden di bawah A 59 k 36 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk semakan keputusan timbalan pendaftar yang bijaksana dalam mengawardkan RM35,000 sebagai yuran penyediaan guaman untuk rayuan di Mahkamah Persekutuan. Responden menghujah bahawa jumlah yang diawardkan tidak mencukupi dan harus ditambah kepada RM70,000.

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Diputuskan, menolak permohonan:

- (1) Pendaftar yang bijaksana telah memberikan alasannya untuk mengawardkan jumlah RM35,000 sebagai yuran penyediaan guaman dan telah menggunakan prinsip-prinsip yang betul untuk mencapai jumlah tersebut. Jumlah yang diawardkan tidaklah terlalu rendah dan di luar perkadaran berhubung kerumitan dan kebaharuan persoalan yang diutarakan. Adalah tidak adil bagi perayu untuk dibebankan lagi dengan kos tambahan sekiranya kuantum ditambah kerana perayu kini tidak boleh mendapat balik hutang penghakiman daripada responden (lihat perenggan 7).
- (2) Dalam kes ini, sebahagian besar penyediaan oleh peguam adalah di peringkat Mahkamah Tinggi dan Mahkamah Rayuan. Dan memandangkan responden yang mencukai berjaya di kedua-dua mahkamah, tidak banyak yang perlu disediakan berkaitan rayuan di Mahkamah Persekutuan (lihat perenggan 8).
- (3) Tambahan pula, permohonan responden untuk semakan semula tidak melibatkan apa-apa kesilapan prinsip di pihak pendaftar. Oleh itu, jumlah RM35,000 yang diawardkan oleh pendaftar yang bijaksana untuk yuran penyediaan guaman adalah adil dan munasabah. Tiada justifikasi untuk mahkamah campur tangan dengan keputusan tersebut (lihat perenggan 9).]

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Notes

For cases on taxation, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2153–2222.

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Cases referred to

Alsop v Oxford (Lord) (1833) 1 My & K 564 (refd)
Chan Kok Choon JP v MBf Finance Bhd [2001] 1 MLJ 5 (refd)
Diversey (Far East) Pte Ltd v Chai Chung Ching Chester & Ors (No 2) [1993] 1 SLR 542 (refd)
Gooi Hock Seng v Chuah Guat Khim [2001] 1 CLJ 583 (refd)

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- A *Kerajaan Negeri Johor & Anor v Adong bin Kuwau & Ors* [2002] 3 MLJ 705 (fold)
- Lloyds Bank Plc v Ang Cheng Ho Quarry & Ors* [1993] 1 MLJ 127 (refd)
- MC Corbett v Ipoh Tin Dredging Ltd* [1936] MLJ 222 (refd)
- Starlite Ceramic Industry Ltd v Hiap Huat Pottery* [1973] 1 MLJ 146 (refd)
- B *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2002] 2 MLJ 385 (refd)

Legislation referred to

- Bankruptcy Act 1967 s 131
- C Limitation Act 1953 s 6(3)
- Rules of the High Court 1980 O 59 rr 34, 36, 36(5)
- R Yogeswari (Che Mokhtar & Ling) for the appellant.*
SK Liow (Liow & Co) for the respondent.

D Nik Hashim FCJ:

- [1] This application under O 59 r 36 of the Rules of the High Court 1980 ('the RHC') was brought before me on 13 November 2006 by the respondent
- E to review the decision of the learned deputy registrar for awarding RM35,000 as getting up fee plus interest 8% for the appeal in this court. Learned counsel for the respondent argued that the issue before the court was complex as it involved the interpretation of two Acts of Parliament namely, the Limitation Act 1953 ('the Act') and the Bankruptcy Act 1967, and as such, the amount
- F awarded for the getting up fee was not reflective of the seriousness of the matter and therefore he suggested the amount be increased to RM70,000. After hearing the parties I dismissed the application with costs of RM1,000 to be paid forthwith to the appellant.
- G [2] The background facts of the case as reported in *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2002] 2 MLJ 385 are that the appellant obtained summary judgment against the respondent on 15 October 1987 but the respondent failed to satisfy the judgment sum. The appellant then filed a bankruptcy notice ('the BN') against the respondent on
- H 24 January 1996 for the sum of RM229,563.68 including accrued interest. The senior assistant registrar dismissed the respondent's application to set aside the BN. However, the respondent was successful in his appeal to the judge in chambers who held that the BN was invalid as the act of recovery of the arrears of interest therein, with the issuance of the BN on 24 January
- I 1996, was time-barred by virtue of s 6(3) of the Act. The appellant's appeal to the Court of Appeal was dismissed and hence the appeal to the Federal Court. The question before the Federal Court was whether, in respect of the second limb of s 6(3) of the Act, no arrears of interest on any judgment debt shall be recovered after the expiration of six years from the date on which the

interest became due. The Federal Court through Abdul Malek Ahmad FCJ (as he then was) answered the question posed, in view of the wording of the second limb of s 6(3) of the Act, the act of recovery of the arrears of interest in respect of the judgment debt must be made within six years of the judgment date and only up to the date of the act of recovery. There was no formal defect or any irregularity and s 131 of the Bankruptcy Act 1967 was not applicable. The only error of the appellant was to file the BN out of time.

[3] The learned deputy registrar in dismissing the application to review her own decision under O 59 r 34 of the RHC for awarding RM35,000 as getting up fee grounded her decision as follows:

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Bagi satu isu ini, responden menghujahkan bahawa mereka berhak untuk mendapatkan kos getting up sebanyak RM250,000.

...

Di dalam hal ini, sebagai pegawai penaksir saya bergantung dan 'diguided' oleh prinsip-prinsip yang 'settled' serta otoriti-otoriti yang telah diputuskan di dalam pemberian kos getting up yakni kos yang sepatutnya diberikan kepada pihak-pihak atas kerja-kerja penyediaan kes yang telah dilakukan.

Saya tidak menafikan bahawa rayuan di hadapan Mahkamah Persekutuan atas soalan yang telah dinyatakan awal tadi adalah merupakan satu soalan novel yang pertama kali timbul di Mahkamah Persekutuan atas penafsiran sebenar peruntukan limb kedua s 6(3) Akta Had Masa 1953 khasnya mengenai tuntutan atas tunggakan faedah atas hutang penghakiman.

Penghakiman Mahkamah Persekutuan di dalam kes ini juga telah menjelaskan dengan nyata kekaburan yang selama ini timbul akibat pembacaan s 6(3) Akta Had Masa 1953 di dalam pengiraan faedah tertunggak bagi tindakan-tindakan penguatkuasaan penghakiman melalui proses kebangkrapan yang dimulakan oleh institusi kewangan dan perbankan terhadap penghutang-penghutang penghakiman yang gagal membayar atau menjelaskan hutang-hutang penghakiman mereka.

...

Semasa perbicaraan rayuan di hadapan Mahkamah Persekutuan, saya berpendapat tugas yang lebih berat adalah ditanggung oleh perayu yakni untuk meyakinkan hakim-hakim Mahkamah Persekutuan bahawa hakim-hakim mahkamah bawahan adalah salah penafsiran mereka akan limb kedua s 6(3) Akta Had Masa, manakala peguam responden hanya perlu mengesahkan tafsiran yang telahpun dibuat oleh hakim-hakim mahkamah bawahan.

...

Di dalam tindakan ini, saya tidak menafikan bahawa kedua-dua pihak responden dan perayu, perlu membuat kajian dan penyelidikan yang agak mendalam bagi menegakkan kes mereka tetapi seperti yang saya katakan tadi ianya merupakan isu penafsiran undang-undang sahaja dan beban yang besar terletak di bahu pihak perayu dan bukannya pada responden.

- A Atas alasan-alasan di atas dan setelah menimbangkan undang-undang mengenai taksiran bagi kos getting up saya berpendapat RM35,000 adalah satu jumlah yang berpatutan dan munasabah.
- B [4] On an application for review under O 59 r 36(5) of the RHC the judge may make such order as the circumstances require. By its terms the provision confers on the judge a discretion. But the discretion is not unfettered. It must be exercised judicially. The judge should not interfere with the taxing registrar's decision unless there is an error of principle or some other material error (*Diversey (Far East) Pte Ltd v Chai Chung Ching Chester & Ors (No 2)* [1993] 1 SLR 542; *Chan Kok Choon JP v MBf Finance Bhd* [2001] 1 MLJ 5) or the quantum allowed is obviously wrong (*Starlite Ceramic Industry Ltd v Hiap Huat Pottery* [1973] 1 MLJ 146) or the registrar has exercised his discretion capriciously or mischievously: *MC Corbett v Ipoh Tin Dredging Ltd* [1936] MLJ 222 at p 224; see also *Malaysian High Court Practice* 2001 Desk Edition at p 1933. Generally speaking, the discretion of the registrar on taxation is final (see judgment of Sir John Leach MR in *Alsop v Oxford (Lord)* (1833) 1 My & K 564, which was quoted with approval by Abdul Malek Ahmad FCJ (as he then was) in *Gooi Hock Seng v Chuah Guat Khim* [2001] 1 CLJ 583; see also *Lloyds Bank Plc v Ang Cheng Ho Quarry & Ors* [1993] 1 MLJ 127 where Chong Siew Fai J (as he then was) held that generally speaking the discretion of the taxing officer on quantum will not be interfered with).
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- F [5] In *Kerajaan Negeri Johor & Anor v Adong bin Kuwau & Ors* [2002] 3 MLJ 705 a similar application was made by the respondents to the judge in chambers for a review of the deputy registrar's decision in awarding RM40,000 for the getting up fee regarding the appeal in the Federal Court. The respondents argued that the said amount was manifestly low. Abdul Malek Ahmad FCJ (as he then was) in affirming the award held
- G (at p 712B–D):
- H Since the review was only as regards the quantum of costs for getting up, it should not be changed unless there was an error of principle on the part of the taxing registrar in fixing the amount. In the present matter, the major preparations by counsel would have been at the High Court level and since the taxing party was successful at both the High Court and the Court of Appeal, there was little for them to prepare in relation to the Federal Court appeal. As such, the quantum for RM40,000 was confirmed.
- I [6] The case of *Kerajaan Negeri Johor* is not dissimilar to the present case, which is a review against quantum, namely, that the getting up fee was inadequate. It is to be noted that the respondent had initially requested RM250,000 as the getting up fee before the taxing registrar, but for the reasons stated in her decision, she awarded only RM35,000.

[7] In my view, she was correct. The learned registrar gave her grounds for awarding the sum of RM35,000 as getting up fee and to my mind, the registrar had applied the correct principles in arriving at that figure. The sum awarded was not manifestly low and out of proportion to the complexity and novelty of the question posed. It would not be just to the appellant to be further burdened with extra costs if the quantum is increased as the appellant could not now recover the judgment debt from the respondent.

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[8] In the present case, the bulk of the preparation by counsel would have been at the High Court and the Court of Appeal levels. And since the taxing respondent was successful at both the courts there was little for the respondent to prepare in relation to the appeal in the Federal Court.

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[9] Further, the respondent's application for review did not involve any error of principle on the part of the registrar. Indeed, it was a review against inadequacy of quantum. As such, the amount of RM35,000 awarded by the learned registrar for getting up fee is fair and reasonable. There is no justification for me to interfere with her decision.

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[10] Accordingly, the application for review was dismissed.

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Application dismissed.

Reported by Navit Kaur Randhawa

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